

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF APPLICATION SERIAL NO. 78/748,674
PUBLISHED IN THE OFFICIAL GAZETTE ON JANUARY 9, 2007
(AGAINST CLASSES 3, 20, 21, 26 AND 35)

LUSTER PRODUCTS, INC.)	Opposition No.:
)	
Opposer,)	
v.)	
)	
VICTORIA'S SECRET STORES BRAND)	
MANAGEMENT, INC.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

In the matter of the trademark application of VICTORIA'S SECRET STORES BRAND MANAGEMENT, INC. for the registration of the mark **LIFE IS PINK PINK IS LIFE** for an extensive range of hair, skin and personal care products/services in International Classes 3, 20, 21, 26 and 35 **Application Serial No. 78/748,674** filed on November 7, 2005, published in the Official Gazette of January 9, 2007, page TM 127. This opposition is only against the Classes 3, 20, 21, 26 and 35 goods/services covered by the application;

Opposer LUSTER PRODUCTS, INC., an Illinois corporation with a principal place of business at 1104 West 43rd Street, Chicago, Illinois 60609, believes it will be damaged by the registration



of the mark shown in the application and hereby opposes same against only the Classes 3, 20, 21, 26 and 35 goods/services covered by the application.

The grounds for the opposition are:

1. Continuously since long prior to November 7, 2005, the Applicant's filing date for its application, the Opposer has marketed, advertised and sold and continues to sell throughout the United States under the names and marks **PINK**, **PINK PROTECTION**, **PINK PLUS**, and **PINK SMOOTH TOUCH** for an extensive range of hair care and personal care products.

2. Opposer's products sold under the above names and trademarks **PINK**, **PINK PROTECTION**, **PINK PLUS**, and **PINK SMOOTH TOUCH** have been extensively promoted throughout the United States to the relevant trade and to the consuming public.

3. By reason of Opposer's aforesaid extensive promotion and sale of its products, Opposer's names and trademarks **PINK**, **PINK PROTECTION**, **PINK PLUS**, and **PINK SMOOTH TOUCH** have acquired great recognition and renown, and the relevant trade and public have come to recognize the names and trademarks **PINK**, **PINK PROTECTION**, **PINK PLUS**, and **PINK SMOOTH TOUCH** as signifying Opposer exclusively.

4. Opposer has duly registered in the United States Patent and Trademark Office and owns the following registrations:

REGISTRATION NUMBER

TRADEMARK

1,503,517

PINK PROTECTION

1,511,336

PINK

1,649,218

PINK

1,864,492

PINK

2,764,677

PINK SMOOTH TOUCH

2,938,183

PINK PLUS

5. Each of the registrations referenced in paragraph No. 4 for the above marks are valid subsisting registrations in full force and effect. Furthermore, Registration Nos. 1503517; 1649218; and 1864492 have each achieved "**incontestable**" registration status thereby constituting conclusive prima facie evidence of Opposer's exclusive right to use said marks in commerce.

6. Applicant's claimed trademark **LIFE IS PINK PINK IS LIFE** as proposed for use in connection with the identified extensive range of hair care, skin care and personal care products/services set forth in the application, is so similar to Opposer's names and trademarks **PINK, PINK PROTECTION, PINK PLUS, and PINK SMOOTH TOUCH** used for a wide range of hair care and personal care products, as to be likely to create confusion, mistake or

deception, all to the damage of Opposer, and to the damage of Opposer's rights in its names and trademarks, which names and marks have been in use long prior to the filing of the Applicant's trademark application.

7. Hair care products sold or offered by Opposer could be identically described to hair care products identified in the Applicant's application.

8. Based upon information and belief the goods/services identified in the Applicant's application for the trademark **LIFE IS PINK PINK IS LIFE** and those products sold under the Opposer's names and marks could be sold to the same potential consumers or end-users as the Opposer's products.

9. Based upon information and belief the goods/services identified in the Applicant's application for the trademark **LIFE IS PINK PINK IS LIFE** and those products sold under the Opposer's names and marks could move through the same channels of distribution and be sold in the same stores or in stores selling competing items.

10. Opposer holds rights in a family of trademarks which include the name and mark **PINK** as a name and mark, or as part of an overall name and mark with said marks often promoted together.

The Applicant's mark **LIFE IS PINK PINK IS LIFE** is thereby confusingly similar to the Opposer's rights in its family of marks.

11. The Applicant filed the underlying application, on information and belief, with actual knowledge of the Opposer's name and mark **PINK** and after receiving written cautionary communications from representatives of the Opposer.

12. Use by the Applicant of the trademark **LIFE IS PINK PINK IS LIFE**, for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

13. Applicant's registration of the trademark **LIFE IS PINK PINK IS LIFE** will result in damage and in the diminishment in sales and the loss of the value of the Opposer's names and marks.

14. Applicant, based upon information and belief, has not used the mark **LIFE IS PINK PINK IS LIFE**. Applicant's earliest available possible priority date for the mark **LIFE IS PINK PINK IS LIFE** is the filing date for its application, specifically November 7, 2005.

15. Applicant's registration of the trademark **LIFE IS PINK PINK IS LIFE** will result in damage, dilution, and in the

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited (in duplicate) with the United States Postal Service as First Class Mail addressed to ATTN: TTAB-FEE, Commissioner for Trademarks, U.S. Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on May 9, 2007.


Burton S. Ehrlich